

Mar 30, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BRANDON C.,

Plaintiff,

v.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

Defendant.

No. 2:19-CV-00027-JTR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 15, 16. Attorney Dana Chris Madsen represents Brandon C. (Plaintiff); Special Assistant United States Attorney Justin Lane Martin represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 8. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

<sup>1</sup>Andrew M. Saul is now the Commissioner of the Social Security Administration. Accordingly, the Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. *See* Fed. R. Civ. P. 25(d).

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Plaintiff was born in 1989 and was 26 years old as of the filing of his application. Tr. 27. He completed high school, with special education services, and has no work history. Tr. 44, 251. He lives with his mother and spends most of his time in his bedroom, drawing, reading comics, and playing video games. Tr. 50, 244-45, 251. He testified he has anxiety about leaving his bedroom. Tr. 50-51.

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error.

ORDER GRANTING DEFENDANT'S MOTION . . . - 2

1 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is  
2 defined as being more than a mere scintilla, but less than a preponderance. *Id.* at  
3 1098. Put another way, substantial evidence is such relevant evidence as a  
4 reasonable mind might accept as adequate to support a conclusion. *Richardson v.*  
5 *Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one  
6 rational interpretation, the Court may not substitute its judgment for that of the  
7 ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,  
8 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the  
9 administrative findings, or if conflicting evidence supports a finding of either  
10 disability or non-disability, the ALJ's determination is conclusive. *Sprague v.*  
11 *Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a decision  
12 supported by substantial evidence will be set aside if the proper legal standards  
13 were not applied in weighing the evidence and making the decision. *Browner v.*  
14 *Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988).

### 15 **SEQUENTIAL EVALUATION PROCESS**

16 The Commissioner has established a five-step sequential evaluation process  
17 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
18 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of  
19 proof rests upon the claimant to establish a prima facie case of entitlement to  
20 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a  
21 claimant establishes that a physical or mental impairment prevents the claimant  
22 from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a claimant  
23 cannot perform past relevant work, the ALJ proceeds to step five, and the burden  
24 shifts to the Commissioner to show (1) the claimant can make an adjustment to  
25 other work; and (2) the claimant can perform specific jobs that exist in the national  
26 economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193-94 (9th  
27 Cir. 2004). If a claimant cannot make an adjustment to other work in the national  
28 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).

1                                   **ADMINISTRATIVE DECISION**

2           On February 20, 2018, the ALJ issued a decision finding Plaintiff was not  
3 disabled as defined in the Social Security Act.

4           At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
5 activity since the application date. Tr. 17.

6           At step two, the ALJ determined Plaintiff had the following severe  
7 impairments: obesity, depressive disorder, anxiety disorder, and autism spectrum  
8 disorder. *Id.*

9           At step three, the ALJ found Plaintiff did not have an impairment or  
10 combination of impairments that met or medically equaled the severity of one of  
11 the listed impairments. Tr. 18-20.

12           The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
13 he could perform a range of medium exertional work, with the following specific  
14 limitations:

15           The claimant is able to lift 50 pounds occasionally and 25 pounds  
16 frequently. In an eight-hour workday, with normal breaks, the  
17 claimant is able to sit six hours and stand and/or walk six hours, in  
18 any combination. The claimant is capable of occasional stooping,  
19 crouching, kneeling, and balancing. The claimant can never crawl.  
20 The claimant can occasionally climb ramps and stairs but never climb  
21 ladders, ropes or scaffolds. The claimant can never work at  
22 unprotected heights and should avoid concentrated exposure to  
23 hazardous moving machinery. In terms of mental abilities, the  
24 claimant can have superficial contact with the general public. Finally,  
25 the claimant can work with, or in the vicinity of, coworkers but not in  
26 a teamwork-type work setting.

27 Tr. 20.

28           At step four, the ALJ found Plaintiff had no past relevant work. Tr. 27.

          At step five, the ALJ determined that, based on the testimony of the  
vocational expert, and considering Plaintiff's age, education, work experience, and  
RFC, Plaintiff was capable of performing jobs that existed in significant numbers

1 in the national economy, including the jobs of hand packager, small products  
2 assembler, and electronics worker. Tr. 26-27.

3 The ALJ thus concluded Plaintiff was not under a disability within the  
4 meaning of the Social Security Act at any time from August 23, 2016, the  
5 application date, through February 20, 2018, the day of the decision. Tr. 26.

## 6 ISSUES

7 The question presented is whether substantial evidence supports the ALJ's  
8 decision denying benefits and, if so, whether that decision is based on proper legal  
9 standards.

10 Plaintiff contends the ALJ erred by (1) improperly rejecting Plaintiff's  
11 symptom testimony; and (2) improperly evaluating the medical opinion evidence.

## 12 DISCUSSION

### 13 1. Plaintiff's symptom statements

14 Plaintiff alleges the ALJ erred in rejecting his symptom testimony without  
15 providing adequate reasons. ECF No. 15 at 14-17.

16 It is the province of the ALJ to make credibility determinations. *Andrews v.*  
17 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). However, the ALJ's findings must be  
18 supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231  
19 (9th Cir. 1990). Absent affirmative evidence of malingering, the ALJ's reasons for  
20 rejecting a claimant's testimony must be "specific, clear and convincing." *Smolen*  
21 *v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834  
22 (9th Cir. 1995).

23 The ALJ found Plaintiff's medically determinable impairments could  
24 reasonably be expected to produce the alleged symptoms; however, he found  
25 Plaintiff's statements concerning the intensity, persistence and limiting effects of  
26 his symptoms were not entirely consistent with the medical evidence and other  
27 evidence in the record. Tr. 21. Specifically, the ALJ found Plaintiff's statements  
28 to be inconsistent with the objective medical evidence and his activities of daily

1 living. Tr. 23. The ALJ also noted Plaintiff had received very little treatment for  
2 his depression and anxiety and the medication he took provided significant  
3 symptom relief. *Id.*

4 Plaintiff objects to the ALJ's use of his activities to undermine the reliability  
5 of his reports and challenges the ALJ's finding of only mild impairment in  
6 adapting and managing himself, arguing that the record documents minimal  
7 activities and self-care and that Plaintiff rarely leaves his bedroom. ECF No. 15 at  
8 14-16. Plaintiff further challenges the ALJ's use of the normal objective findings,  
9 arguing they are not an accurate representation of his longitudinal functioning. *Id.*  
10 at 16. Plaintiff finally asserts that his allegations are supported by the findings of  
11 Dr. Lontz and Dr. Arnold. *Id.* 16-17.

12 *a. Minimal Treatment*

13 The ALJ found Plaintiff's allegations of disabling mental conditions to be  
14 undermined by the fact that he had received very little treatment for his depression  
15 and anxiety, noting he attended only one psychotherapy visit in May 2017 and was  
16 not prescribed any medications for his mental condition until 2016. Tr. 23.  
17 Unexplained or inadequately explained reasons for failing to seek medical  
18 treatment can cast doubt on a claimant's subjective complaints. *Fair v. Bowen*,  
19 885 F.2d 597, 603 (9th Cir. 1989). While Plaintiff reported his depression and  
20 anxiety symptoms to his medical providers, he repeatedly declined referrals to  
21 counseling. Tr. 257, 301. He attended one session of individual psychotherapy,  
22 but did not return. Tr. 421, 417-18. The record contains no explanation for  
23 Plaintiff's failure to seek treatment for his allegedly disabling conditions. The ALJ  
24 reasonably relied on this factor in discounting Plaintiff's symptom reports.

25 *b. Objective evidence*

26 The ALJ found Plaintiff's statements about his symptoms were inconsistent  
27 with the objective medical evidence, noting mental status evaluations routinely  
28 showed normal mood and affect, and emphasizing providers' assessments that

1 Plaintiff's mental health and autism spectrum conditions have been described as  
2 mild. Tr. 23. Although it cannot serve as the sole ground for rejecting a claimant's  
3 symptom statements, objective medical evidence is a "relevant factor in  
4 determining the severity of the claimant's pain and its disabling effects." *Rollins v.*  
5 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Plaintiff asserts the normal findings  
6 cited by the ALJ are not an accurate portrayal of Plaintiff's condition, due to the  
7 cycling nature of mental health conditions. ECF No. 15 at 16. However, Plaintiff  
8 points to no evidence in support of this argument that the record shows cycling,  
9 other than his reports. The record reflects almost entirely normal mental status  
10 exams. Tr. 257, 261, 264-65, 295, 302, 306, 418. On only a few occasions did  
11 providers document anything notable about Plaintiff's mood or affect. Tr. 245,  
12 253, 291, 295, 302, 306, 418. The ALJ's interpretation of the record is supported  
13 by substantial evidence.

14 *c. Improvement with treatment*

15 The ALJ found once Plaintiff started mental health medication in 2016, he  
16 experienced significant symptom relief, in that he was coming out of his room  
17 more and seemed happier on the medication. Tr. 23. While an ALJ may consider  
18 the type and efficacy of treatment in assessing a claimant's reliability, the fact that  
19 a person suffering from depression makes some improvement "does not mean that  
20 the person's impairment[ ] no longer seriously affect[s] [his] ability to function in a  
21 workplace." *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001); *see*  
22 *also Ryan v. Comm'r of Soc. Sec.*, 528 F.3d 1194, 1200-01 (9th Cir. 2008). While  
23 the ALJ is correct that the record reflects improvement in Plaintiff's condition with  
24 treatment, he continued to report symptoms of anxiety, isolation, sleep disturbance,  
25 and generally remaining in his home. Tr. 250, 261, 294, 301, 305, 417, 421. In  
26 April 2017 he reported he was not getting significant relief from his medication  
27 anymore and felt his anxiety and depression were steadily worsening. Tr. 291.  
28 The ALJ's discussion of improvement with medication cited to a single report of

1 improvement when Plaintiff had been on medication for only a few weeks. Tr. 250  
2 (cited by ALJ as Ex. 2F, pg.1). The finding of improvement with medication does  
3 not constitute substantial evidence to discount Plaintiff's reports of ongoing  
4 difficulties.

5 However, because the ALJ provided other clear and convincing reasons for  
6 discounting Plaintiff's allegations, any such error was harmless. *Batson v. Comm'r*  
7 *of Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (affirming a credibility  
8 finding where one of several reasons was unsupported by the record).

9 *d. Daily activities*

10 A claimant's daily activities may support an adverse credibility finding if the  
11 activities contradict his other testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.  
12 2007). The ALJ found Plaintiff's allegation that he rarely leaves his bedroom to be  
13 inconsistent with his activities of daily living, noting he attended regular doctor's  
14 appointments and was able to attend movies with his friends and go out to dinner  
15 with his girlfriend. Tr. 23. The record does not reflect Plaintiff engaging in the  
16 above activities on a regular basis. Plaintiff testified he leaves his home to go to a  
17 restaurant or movie maybe one time per week. Tr. 50. He stated he goes grocery  
18 shopping with his mother less than once a month. *Id.* The record similarly reflects  
19 social outings to be rare, with Plaintiff's mother and girlfriend routinely reporting  
20 he spends the vast majority of his time in his room. Tr. 245, 250-51, 301, 417,  
21 421. The ALJ characterized Plaintiff's doctor visits as "regular," but the record  
22 reflects no more than one or two appointments per month, with several stretches of  
23 multiple months with no visits. The activities identified by the ALJ do not conflict  
24 with Plaintiff's testimony that he rarely leaves his home.

25 However, because the ALJ provided other clear and convincing reasons for  
26 discounting Plaintiff's allegations, any such error was harmless. *See Batson*, 359  
27 F.3d at 1197.

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1   **2.    Medical opinion evidence**

2           Plaintiff argues the ALJ improperly weighed the opinion evidence, giving  
3 undue weight to the medical expert who testified at the hearing, despite her lack of  
4 understanding of Plaintiff's condition and her endorsement of Plaintiff's need for a  
5 companion animal. ECF No. 15 at 17-18. Plaintiff further asserts the fact that  
6 Plaintiff was not provided vocational rehabilitation services is evidence that the  
7 Department of Vocational Rehabilitation did not believe he could be trained or  
8 rehabilitated. ECF No. 15 at 18.<sup>3</sup>

9           In weighing medical source opinions, the ALJ should distinguish between  
10 three different types of physicians: (1) treating physicians, who actually treat the  
11 claimant; (2) examining physicians, who examine but do not treat the claimant; and  
12 (3) nonexamining physicians who neither treat nor examine the claimant. *Lester*,  
13 81 F.3d at 830. The ALJ should generally give more weight to the opinion of a  
14 treating physician than to the opinion of an examining physician, and more weight  
15 to an examining source than a non-examining source. *Orn v. Astrue*, 495 F.3d 625,  
16 631 (9th Cir. 2007). In evaluating the weight owed to opinions the ALJ should  
17 consider the nature of the relationship, the supportability and consistency of the  
18 opinion, any specialization of the source, and other factors, such as the

19   ///

20 \_\_\_\_\_  
21           <sup>3</sup>Plaintiff makes vague allusions to Dr. Lontz's and Dr. Arnold's opinions as  
22 supportive of Plaintiff's claim for disability but does not discuss or assign error to  
23 the ALJ's treatment of these opinions until his reply brief. ECF No. 17 at 4-8.  
24 Generally, the Court will not consider arguments that were not actually argued in  
25 the opening briefing. *Independent Towers of Wash. v. Wash.*, 350 F.3d 925, 929  
26 (9th Cir. 2003); *Greenwood v. Fed. Aviation Admin.*, 28 F.3d 971, 977 (9th Cir.  
27 1994). Because Plaintiff failed to raise these issues in his opening brief, the Court  
28 declines to consider them.

1 understanding of the disability programs and the source's familiarity with the case  
2 record. 20 C.F.R. § 416.927(c).

3 *a. Dr. Winfrey, medical expert*

4 Plaintiff argues the ALJ was wrong to afford great weight to the opinion of  
5 Dr. Nancy Winfrey, the medical expert who testified at the hearing. ECF No. 15 at  
6 18. Specifically, Plaintiff alleges Dr. Winfrey did not understand that Plaintiff  
7 spent most of his time in his room and that the occasional social outings he did do  
8 were only with his mother and girlfriend. *Id.* Plaintiff's allegation that Dr.  
9 Winfrey did not understand the nature of Plaintiff's condition is supported by no  
10 evidence. Dr. Winfrey reviewed the record, testified as to Plaintiff's conditions  
11 and limitations, and specifically acknowledged in her testimony that she was aware  
12 of Plaintiff's habits. Tr. 42. Plaintiff has advanced no legal basis for rejecting the  
13 expert's conclusions or questioning her comprehension of the record.

14 As to Plaintiff's argument that Dr. Winfrey endorsed his use of a companion  
15 animal, her actual testimony was that it was a good idea and helpful to Plaintiff,  
16 but she specifically referenced the letter regarding the animals, which clarified the  
17 dogs were not service animals and were only for use in the home. Tr. 42, 427. Dr.  
18 Winfrey did not state that Plaintiff would need his dogs to accompany him to the  
19 workplace.

20 The Court finds the ALJ did not err in giving great weight to Dr. Winfrey's  
21 opinion.

22 *b. Vocational rehabilitation*

23 Plaintiff asserts, with no evidence, that because he was not provided  
24 vocational training, this means the Department of Vocational Rehabilitation (DVR)  
25 did not believe he could be trained or rehabilitated for gainful employment. ECF  
26 No. 15 at 18. It is not established in the record that DVR actually made such a  
27 determination. Plaintiff testified vaguely that vocational services with DVR "kind  
28 of fell through," and that there was some discrepancy regarding the report and that

1 the counselor thought he was able to work. Tr. 45. The only evidence from DVR  
2 is a single certification of disability, noting Plaintiff had “most significant  
3 disabilities” and would require multiple services over an extended period of time to  
4 become employed. Tr. 276. Plaintiff’s assertion that he was deemed unable to  
5 work is not supported by the record. Plaintiff makes no further argument regarding  
6 any actions on the part of the ALJ or errors in the assessment, and thus has waived  
7 the right to do so.

### 8 CONCLUSION

9 Having reviewed the record and the ALJ’s findings, the Court finds the  
10 ALJ’s decision is supported by substantial evidence and free of legal error.

11 Therefore, **IT IS HEREBY ORDERED:**

12 1. Defendant’s Motion for Summary Judgment, **ECF No. 16**, is  
13 **GRANTED.**

14 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 15**, is **DENIED.**

15 The District Court Executive is directed to file this Order and provide a copy  
16 to counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant**  
17 **and the file shall be CLOSED.**

18 DATED March 30, 2020.



A handwritten signature in black ink, appearing to read "M", is written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE